

Tamworth Community Safety Partnership – CPN PROCESS

STAGE 1 - ISSUING A COMMUNITY PROTECTION WARNING

Delegated officers/Police may issue a Community Protection Warning providing that they have believe the tests for issue have been met.

The issue of a warning will be:

- By use of a standard template written notice (whilst on Patrol)¹
- By use of a standard template electronic warning forwarded to the recipient

The Warning must detail reason for the concern and a date by which the person must comply.

The usual rules of evidence will apply and the officer must have evidence capable of proving the offence – this will be provided on the summary test of evidence sheet. It is likely that any CPN will be evidenced with some or all of the following, log sheets, witness statements, officer evidence, CCTV, photographs etc. **Breach of a CPN is a criminal offence so needs to be proved beyond all reasonable doubt.**

Copies of the warning will be returned to Tamworth Borough Council, Environmental Management, 159B Sandy Way, Amington, Tamworth, B77 4ED

Or by email environmentalmanagement@tamworth.gov.uk

Each warning will be entered onto the M3 enforcement system

A report will be completed each week and returned to the ASB officer for update to the central ASB spreadsheet and discussion at morning briefings.

The issuing department/Police will be required to monitor compliance with the warning and record all evidence as appropriate.

¹ *There may be occasions (eg noisy parties) where the officers feel an immediate issue of a verbal warning is required to immediately desist. A warning will be issued on the stationery provided, a note made in the personal note book and the copy of the note returned to the Business Support Team, Environmental Management as soon as practical. This may also apply when the ASB concern is only applicable to the issuing agency (eg littering, dirty gardens)*

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STAGE 2 - ISSUE OF COMMUNITY PROTECTION NOTICE

A CPN can **only** be served following the service and breach of a Warning Notice.

Prior to service of CPN, the lead department/agency must arrange for consultation with the Tamworth Community Safety Partnership via morning briefings and/or the Joint Operations Group to discuss implications of the issue of a CPN.²

The case conference will also include a decision on the sanction for possible breach of the CPN and agreement on the agency who will arrange court procedures.

If the Behaviour is still continuing and with agreement the Lead Officer will draft the Community Protection Notice.

- The Notice must contain the type of behaviour to be addressed
- The Length of time given for the behaviour to change (Review Period; 7, 14, 21 or 28days).

All CPNs will be recorded on the Tamworth Borough Council M3 enforcement system and must be signed by the nominate Lead Officer of each department/agency

Once signed, the Notice should be served upon the perpetrator. The following methods of service will qualify:

- By handing it to the perpetrator (preferable)
- By hand delivering it through the door of the property
- By posting it to the property
- Scanned and signed Notice emailed to perpetrator and recognised individual or company email address with delivery receipt.

The Lead Officer should then record the delivery method, time and date on the enforcement system as proof of service.

Any person issued a CPN has 21 days to appeal against it. A CPN that is appealed does not come into effect until the appeal is heard, in order to avoid any confusion with a breach – when the CPN is issued it will have a start date of 21 days after issue. This will ensure that if someone breaches they cannot tell the court that they intended to appeal.

² *In situations where the behaviour requires immediate actions (after issue of a warning), the Police or delegated agency can issue a CPN with authorisation from the relevant lead officer or the Tamworth Borough Council lead delegated officer. A notice will be issued on the stationery provided, a note made in the personal note book and the copy of the note returned to the Business Support Team, Environmental Management as soon as practical. This may also apply when the ASB concern is only applicable to the issuing agency (eg littering, dirty gardens)*

Appeals

Anyone issued with a CPN has the opportunity to appeal it in a magistrates' court. An appeal can be made on the grounds that the test was not met because:

- **the behaviour did not take place.** Officers will have collected evidence to place **beyond any reasonable doubt** that the behaviour occurred. However, in cases where the officer has relied on witness statements alone, they should consider the potential for this appeal route and build their case accordingly.
- **the behaviour has not had a detrimental effect on the quality of life of those in the locality.** Again, the importance of witness statements and any other evidence that the behaviour in question is having a negative impact on those nearby should be collected to ensure this defence is covered.
- **the behaviour was not persistent or continuing.** In some cases, judging persistence will be straightforward. However, in cases where a decision to issue a CPN is taken more quickly, officers should use their professional judgement to decide whether this test is met and may need to justify this on appeal.
- **the behaviour is not unreasonable.** In many cases, individuals, businesses or organisations that are presented with evidence of the detrimental impact of their behaviour will take steps to address it. Where they do not, they may argue that what they are doing is reasonable. In deciding whether behaviour is unreasonable, officers should consider the impact the behaviour is having on the victim, whether steps could be taken to alleviate this impact and whether the behaviour is necessary at all.
- **the individual cannot reasonably be expected to control or affect the behaviour.** In issuing the CPN, the officer must make a judgement as to whether the individual or business or organisation can reasonably be expected to do something to change the behaviour. The officer should be prepared to justify this decision in court if required.

Other reasons:

- **Any of the requirements are unreasonable.** Requirements in a CPN should either prevent the anti-social behaviour from continuing or recurring, or reduce the detrimental effect or reduce the risk of its continuance or recurrence. As such, it should be related to the behaviour in question.

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- **There is a material defect or error with the CPN.** This ground for appeal could be used if there was a failure to comply with a requirement in the Act, such as a failure to provide a written warning before issuing a CPN.
- **The CPN was issued to the wrong person.** This could be grounds for appeal if the CPN was posted to the wrong address or the wrong person was identified in a business or organisation.

The person issued with the CPN must appeal within **21 days** of issue. Where an appeal is made, any requirement included under section 43(3)(b) or (c), namely a requirement **to do** specified things or take reasonable steps to achieve specified results, is **suspended** until the outcome of the appeal. However, requirements **stopping** the individual or body from doing specified things under section 43(3)(a) **continue** to have effect.

STAGE 3 – PENALTY ON BREACH OF CPN

The Act allows the offence of breaching the CPN to be discharged with a Fixed Penalty Notice. This will be the case for minor infringement of a CPN. Each local authority, when making this decision, must ensure that it is proportionate and in line with their Enforcement Policy.

When we are taking someone to court for breach of a CPN it is important that we are able to demonstrate that we have tried to resolve the breach.

Where an individual, business or organisation fails to comply with the terms of a CPN, a number of options are available for the issuing authority. **It is envisaged that the two most common sanctions that will be used are FPN's and/or Prosecution for breach.**

A decision will be made by after failure to comply with the warning and based on evidence and consultation on a daily/weekly basis at the ASB Hub meetings

Fixed penalty notices (Section 52):

- Depending on the behaviour in question, the issuing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction.
- In making the decision to issue a FPN, the officer should be mindful that if issued, payment of the FPN would discharge any liability to conviction for the offence.
- In order to allow the individual time to pay the FPN, no other associated proceedings can be taken until at least 14 days after the issue.
- Fixed Penalties of £100 should be issued for a breach where agreed. Any subsequent breaches should be dealt with by summons or arrest.

Warning notices will be recorded on M3 and FPNs will be issued using the same system with linked jobs, enabling record of payment to be made.

Remedial action by Tamworth Borough Council (Section 47):

Prior to taking remedial action, it needs to be considered that the act allows for the court to order works to be undertaken. The court making an order would potentially be less onerous on the Council and may be preferable and the ASB Hub may decide to progress directly to court for prosecution based on risk based evidence and request mandatory Court sanctions.

- If an individual or body fails to comply with a CPN issued by the council, the council may take remedial action to address the issue. Works can only be carried out on land that is open to the air.
- For premises other than land open to the air, a defaulter must be issued with a notice specifying the works, the estimated cost (no on costs can be charged) and inviting their consent.

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- If works are carried out, the defaulter must be issued with a notice detailing the works carried out and the cost of the works (no on costs).
- The Council can recover its costs subject to an appeal.
- Where the CPN has been issued by the police or a social landlord, but they believe remedial action is an appropriate sanction, they should approach the council to discuss the best way to move forward. For instance, the social landlord could undertake the work on behalf of the council.
- If it is decided that remedial action is the best way forward, the council (or the other agency in discussion with the council) should establish what works are required to put the situation right.

Prosecution or failing to Comply with a CPN (Section 48):

Failure to comply with the requirements of a CPN is an offence that can be prosecuted in the Magistrates' Court. Sanctions are by way of a fine of up to scale 4 for an individual or up to £20,000 for a body. As such, a person suspected of having committed such an offence could be arrested. It is envisaged that arrests will not be commonplace in relation to a CPN. **The Court may also impose the sanctions below.**

Remedial orders (Section 49):

On conviction for an offence of failing to comply with a CPN, the prosecuting authority may ask the court to impose a remedial order and/or a forfeiture order. This could be for a number of reasons, for instance:

- The matter may be deemed so serious that a court order is warranted;
- Works may be required to an area that requires the owner's or occupier's consent and this is
- not forthcoming; or
- The issuing authority may believe that forfeiture or seizure of one or more items is required as a result of the behaviour (for instance, sound making equipment).

A remedial order may require the defendant:

- to carry out specified work (this could set out the original CPN requirements); or
- to allow work to be carried out by, or on behalf of, a specified local authority. Where works are required indoors, the defendant's permission is still required. But this does not prevent a defendant who fails to give that consent from being in breach of the court's order.

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Where remedial action is taken by a council under section 47 or 49 the individual has the opportunity to appeal on the grounds that the cost of the work being undertaken on their behalf is disproportionate.

Forfeiture orders (Section 50):

Following conviction for an offence under section 45, the court may also order the forfeiture of any item that was used in the commission of the offence. This could be spray paints, sound making equipment or a poorly socialised dog where the court feels the individual is not able to manage the animal appropriately (re-homed in the case of a dog). Where items are forfeited, they can be destroyed or disposed of appropriately.

Seizure (Section 51):

In some circumstances, the court may issue a warrant authorising the seizure of items that have been used in the commission of the offence of failing to comply with a CPN. In these circumstances, an enforcement officer may use reasonable force, if necessary, to seize the item or items.

Failure to comply with any of the requirements in the court order constitutes contempt of court and could lead to a custodial sentence. If an individual is convicted of an offence under section 48, they may receive up to a level 4 fine (up to £20,000 in the case of a business or organisation).

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